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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,600	08/30/2000	Stephen Marschner	MS1-529US	3040
22801	7590	01/12/2004		<b>EXAMINER</b>
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			BRODA, SAMUEL	
			ART UNIT	PAPER NUMBER
			2123	
			DATE MAILED: 01/12/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	F26 MARSCHNER ET AL.
	09/652,600	Examiner
	Samuel Broda	Art Unit 2123
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>30 August 2000</u> .		
2a) <input type="checkbox"/> This action is <b>FINAL</b> .                            2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-46</u> is/are pending in the application.		
4a) Of the above claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input checked="" type="checkbox"/> Claim(s) <u>1-46</u> are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).		
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:		
1. <input type="checkbox"/> Certified copies of the priority documents have been received.		
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.		
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
13) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.		
a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.		
<b>Attachment(s)</b>		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

## **DETAILED ACTION**

### ***Election/Restriction***

1. As the claims were originally presented, restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15 and 24-31, drawn to a facial image processing system and method that captures structure and reflectance data, classified in class 702, subclass 159.
- II. Claims 17-23 and 32-35, drawn to methods and systems for processing image data to derive an albedo map, classified in class 703, subclass 2.
- III. Claims 36-46, drawn to a system and method for processing albedo maps from multiple images to derive a single albedo map, classified in class 703, subclass 2.

**2.1** Inventions of Groups I, II, and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable.

In the instant case, the invention of Group I has separate utility such as capturing data to form an image file of a face or to construct a biometric database. The invention of Group II has separate utility as the albedo maps could be used to discern and identify different faces. The invention of Group III has separate utility as the combination of maps based on multiple images:

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(1) provides a more accurate albedo map when the lighting contrast on the subject is high;

and

(2) permits the construction of a three-dimensional albedo map.

These separate uses distinguish the invention of each of Groups I, II, and III from one another.

Therefore, the each of the inventions of Groups I-III is a separately useable subcombination. See MPEP § 806.05(d).

**2.2** Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

**2.3** Claim 16 links inventions of Groups I and II. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claim 16. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are

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no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971).

See also MPEP § 804.01.

**2.4** Attempts to arrange an oral election via telephone were made repeatedly during the weeks of 29 December 2003 and 5 January 2004, with messages left for Lance Sadler, Reg. No. 38,605 and telephone conversations with his staff. However, since representatives for Applicants never returned the telephone calls, no election was made.

Applicants are advised that a reply to this requirement must include an election of the invention to be examined, even though the requirement may be traversed under 37 CFR 1.143.

**3.** Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samuel Broda, whose telephone number is (703) 305-1026. The Examiner can normally be reached on Mondays through Fridays from 8:00 AM – 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin Teska, can be reached on (703) 305-9704. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.



**SAMUEL BRODA, ESQ.  
PRIMARY EXAMINER**